IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6167 of 1997

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTROLLER - Petitioner(s)

Versus

RAGHUBHA K WAGHELA - Respondent(s)

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Appearance :

MS BHAVIKA KOTECHA for MR YOGESH S LAKHANI for Petitioner No(s).: 1.

MR JM BAROT for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 12/07/2005

ORAL JUDGMENT

1. This petition is directed against the judgment and award dated 5th February, 1997 passed by the Industrial Tribunal in Reference [L.C.G.] No. 693 of 1996, whereby the Industrial Tribunal has directed the petitioner Corporation to reinstate the respondent workman with continuity in service along with 25% back wages.

2. The short facts of the case are that the respondent workman was working as a Conductor with the petitioner Corporation. On 16th April, 1992, while on duty, the department found that the respondent workman has misused the coupon book no. 5675 and has misappropriated an amount of Rs.584=25 ps. Since the charges levelled against the respondent workman were proved, he was chargesheeted and a departmental inquiry was held against him. On conclusion of the departmental inquiry, he was dismissed from the service w.e.f. 30th June, 1993.

2.1. Being aggrieved by the said order, the respondent workman raised an industrial dispute which was ultimately referred to the Industrial Tribunal, Gandhidham, for adjudication. The Industrial Tribunal after considering the case on merits, partly allowed the Reference with the aforesaid directions. Hence, this petition.

3. I have heard the learned counsel for the parties. Having perused the materials placed on record, it is found that the Industrial Tribunal, while exercising the powers under Section 11A has modified the order of dismissal by granting reinstatement with continuity of service along with 25% back wages. In my opinion, the Industrial Tribunal has not committed any error in ordering reinstatement with continuity in service *inasmuch* as the Industrial Tribunal has concluded that the findings recorded by the inquiry officer were perverse. However, the Industrial Tribunal while exercising the powers under Section 11A of the Industrial Disputes Act, 1947 ought to have imposed some

penalty on the respondent workman. Looking to the seriousness of the misconduct, I am of the opinion that interest of justice would be met by imposing a penalty of stoppage of two increments with future effect.

3.2. So far as the question as regards grant of back wages is concerned, the Industrial Tribunal has not given cogent reasons for awarding 25% back wages. Moreover in view of the principle laid down by the Apex Court that a workman shall not be entitled for back wages if he has not worked for the interim period, the respondent herein cannot be said to be entitled for back wages. In that view of the matter, the impugned order of the Industrial Tribunal as regards grant of back wages is required to be quashed and set aside.

4. For the foregoing reasons, the petition is partly allowed. The order dated 5th February, 1997 passed by the Industrial Tribunal in Reference [L.C.G.] No. 693 of 1996, is modified to the extent that the direction qua reinstatement with continuity in service is confirmed and the direction qua awarding 25% back wages is quashed and set aside. However a penalty of stoppage of two increments with future effect is imposed on the respondent workman. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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